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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/474,783	12/30/1999	DONALD K. NEWELL	2207/6929	2707
23838	7590	12/31/2003		
KENYON & KENYON 1500 K STREET, N.W., SUITE 700 WASHINGTON, DC 20005				
			EXAMINER NALEVANKO, CHRISTOPHER R	
			ART UNIT 2611	PAPER NUMBER 13

DATE MAILED: 12/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/474,783

Applicant(s)

NEWELL ET AL.

Examiner

Christopher R Nalevanko

Art Unit

2611

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

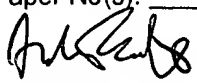
Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-21.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: See Continuation Sheet

  
ANDREW FAILE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600

Continuation of 5. does NOT place the application in condition for allowance because: Regarding Claim 1, Applicant argues that "...the Russo patent does not disclose or suggest sending control information embedded in the broadcast content where the 'embedded control information defines an action to be taken pertaining to the broadcast content' as recited in claim 1... Contrary to the Examiner's assertion, while an authorization key and compression information may be control information that specifies how to do something, they do not 'define actions to be taken pertain to the broadcast content,' as recited in claim 1" (page 7 lines 5-20). Examiner asserts that specifying how do do something and defining an action (which is doing something), is they same. The authorization codes and descrambling keys shown in Russo define how the broadcast content will decrypted and descrambled so that the data can be used by the receiver. Furthermore, Applicant argues "the broadcast code of the Russo patent is not send 'embedded in the broadcast content,' as recited in claim 1...but is sent sperarately 'in an unused portion of one or more channels or through the use of an unused channel in its entirety'" (page 8 lines 12-17). As Applicant states, Russo shows that the supplemental information maybe sent in an 'unused portion of one or more channels' (col. 8 lines 65-67, col. 9 l ines 1-4). If this supplemental data is in an unused portion of the boradcast, then the used portion is broadcast content. This could equate to inserting data in the VBI of a broadcast, which is an unused portion. Since this 'control information' is surrounded by broadcast content, it is therefore embedded in the broadcast content.

Continuation of 10. Other: The limitation Claims 7 and 19 control information "embedded" in the signal would require further consideration and search.